Eight Mile Style, LLC et al v. Apple Computer, Incorporated Doc. 43 Att. 3

Exhibit C

Rule 30(b)(6) deposition notice to Apple

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UNITED STATES DISTRICT COURT
FOR THE IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EIGHT MILE STYLE, LLC, et al.

Plaintiffs,

vs.

Case No. 2:07-cv-1q3164
Hon. Anna Diggs Taylor

APPLE COMPUTER, INC. and AFTERMATH RECORDS d/b/a AFTERMATH ENTERTAINMENT,

Defendant.

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NOTICE OF 30 (B)(6) DEPOSITION OF APPLE COMPUTER, INC.

PLEASE TAKE NOTICE that pursuant to Rules 26, 30 and 45 of the Federal Rules of Civil Procedure, Eight Mile Style, LLC and Martin Affiliated, LLC ("Plaintiffs") will take the deposition upon oral examination of Apple Computer, Inc. by the person(s) designated by Defendant pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure as the most knowledgeable and able to testify concerning the subject matters identified Exhibit A.

The deposition will take place on May 28, 2008, beginning at 9:00 a.m. P.D.T. at the offices of Latham & Watkins LLP, 140 Scott Drive, Menlo Park CA 94025, and will continue from day to day, Sundays and holidays excluded, until completed, before a notary public or other officer authorized to administer oaths. Pursuant to Rule 30(b)(2), the deposition shall be recorded by stenographic means, and by videotape.

This Notice of Deposition is without prejudice to Plaintiff's right to notice any further deposition of any director, officer, employee, or agent of Defendants or any of its subsidiaries in his or her professional or individual capacity.

DATED: May 12, 2008

Respectfully submitted,

KING & BALLOW

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Attorneys for Plaintiffs

EXHIBIT A

I. DEFINITIONS

A. "You" or "Defendants" or "Defendant" refers to Defendants Apple Computer, Inc. and Aftermath Records, collectively or separately, named in and referred to as such in the Complaint in the above-referenced case, their agents, representatives, attorneys, and/or any other persons acting or purporting to act on their behalf.

B. "Aftermath" refers to Defendant Aftermath Records d/b/a Aftermath Entertainment its parent company, its subsidiaries, its affiliates, and any other related company, as well as their agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

C. "Apple" refers to Defendant Apple Computer, Inc. its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

D. "Plaintiffs" collectively refers to Plaintiffs Eight Mile Style, LLC and Martin Affiliated, LLC, named in and referred to as such in the Complaint in the above-referenced case, their agents, representatives, attorneys, and/or any other persons acting or purporting to act on their behalf.

E. "Eight Mile" refers to Plaintiff Eight Mile Style, LLC its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

F. "Martin Affiliated" refers to Plaintiff Martin Affiliated, LLC its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

G. "UMG" or "Universal" refers to UMG Recordings, Inc., its parent company, its subsidiaries, its affiliates, and any other related company, as well as their agents, representatives, attorneys, and/or any other persons or entities acting or purporting to act on their behalf.

H. "Eminem" refers to Marshall B. Mathers III, his agents, representatives, attorneys, and/or any other persons acting or purporting to act on his behalf.

I. "1998 Agreement" shall mean the agreement between F.B.T. and Aftermath on March 8, 1998 whereby F.B.T. agreed to furnish to Aftermath the exclusive recording services of Eminem.

J. "2003 Agreement" shall mean the agreement entered into by Aftermath and Eminem on August 22, 2003 which expressly affirmed the 1995 Agreement, the March 9, 1998 Agreement, the Letter of Inducement, and the Novation.

K. "Eminem Compositions" shall mean the musical compositions written and composed, in part, by Eminem, which are attached as collective Exhibit A to the Complaint in this action.

L. "And" and "or" each shall be construed either conjunctively or disjunctively as necessary to bring within the scope of these topics any information or document that might otherwise be construed to be outside its scope.

M. References to the plural shall include the singular; references to the singular shall include the plural.

N. References to the feminine shall include the masculine; references to the masculine shall include the feminine.

O. All legal terms, accounting terms, and other technical terms associated with a particular industry, profession or identifiable body of knowledge shall have the meanings customarily and ordinarily associated with those terms within that industry, profession or discipline.

P. "Permanent download" shall mean the delivery of a digital audio file to an end user's computer where such recording may be accessed by the end user without the limits set forth in a conditional download.

Q. "Conditional download" shall mean the delivery of a digital audio file to an end user's computer, with certain limits imposed on the end user's ability to enjoy the sound recording, e.g., the recording may only be accessed for a certain number of plays, or for so long as the consumer continues subscribing to a particular music service. This definition includes Limited Download as that term is defined on the document produced in this action bates stamped AFT 0056512.

R. "Streaming" shall mean the transmission of a digital audio file by means of an internet transmission that is substantially contemporaneous with the audible rendering of such sound recording to the end user using a technology that is not designed to result in a reproduction of the sound recording that would be usable without simultaneous, active connection to the digital transmission source or after the cessation of the transmission, other than a transitory reproduction required to render such contemporaneous performance.

S. "Mastertone" shall mean a digital audio file formatted for playback on wireless devices capable of voice communications or text messaging including but not limited to cellular telephones, personal digital assistants, and pagers.

T. "Digital Music Provider" refers to any and all entities including, but not limited to, iTunes, Buy.com, Napster, Rhapsody, iMeem, and Nokia, among others, that reproduce, sell and/or distribute master recordings for digital uses, including but not limited to digital download, digital streaming, and mastertones.

U. "Digital Use" shall include Permanent downloads, Conditional downloads, Streaming, Mastertones, and any other format of digital audio files used by a Digital Music Provider to reproduce, sell and/or distribute master recordings.

II. SUBJECT MATTERS UPON WHICH DEPONENT WILL BE REQUIRED TO TESTIFY

1. The number of permanent downloads of sound recordings embodying the Eminem compositions from the iTunes Music Store.

2. The amount of money Apple has received for the Eminem compositions.

3. Apple's receipt of Joel Martin's cease and desist letter and any actions taken by Apple in response.

4. Any agreements Apple has in which an artist, an artist representative, or a publisher has signed the agreement with or without the signature of the record company, and why that has occurred.

5. Any publishing licenses or agreements Apple has with the Harry Fox Company or directly with any music publisher, the names of such publishers, and why Apple has executed such agreements.

6. Any agreements for Digital Uses that Apple has executed in which it is responsible for obtaining mechanical licenses or paying mechanical royalties.

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 10250 Constellation Boulevard, Nineteenth Floor, Los Angeles, California 90067.

On May 12, 2008, I served the foregoing document(s) described as:

NOTICE OF 30(B)(6) DEPOSITION OF APPLE COMPUTER, INC.

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

☒ (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☐ (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☒ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee(s) named on the Service List.

Executed this 12th day of May, 2008, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Judith Hughes

JUDITH HUGHES

SERVICE LIST

F.B.T. Productions, LLC, et al. v. Aftermath Records, et al.
USDC Case No.: CV 07-03314 PSG (MANx)

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